

REMARKS

The Office Action dated September 21, 2000 has been carefully reviewed and the forgoing amendments are made in response thereto. In view of these amendments and the following remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Applicants respectfully submit that no prohibited new matter has been introduced by the amendments.

I. Summary of the Office Action

1. Upon entry of the foregoing amendment, claims 21 and 25-32 will be pending.
2. The Office Action withdrew claims 22-24 and 33 as being directed to a non-elected invention.
3. The Office Action objected to claims 21 and 25 as being dependent upon a rejected base claim.
4. The Office Action rejected claims 2, 20, and 28-32, under 35 U.S.C. § 102 (b), as being anticipated by Dhordain *et al.* (1995).
5. No claims were allowed.

II. Response to the Office Action

1. Objection to Claims 22-24 and 33.

Claims 22-24 and 33 were withdrawn as being directed to non-elected subject matter.

Applicants have canceled claims 22-24 and 33 to remove non-elected subject matter, without prejudice or disclaimer of Applicants' right to file divisional applications to claim the non-elected subject matter.

2. Objection to claims 21 and 25 as being dependent upon a rejected base claim. The Office Action objected to claims 21 and 25 as being dependent upon a rejected base claim.

Respectfully, claim 21 has been amended and is now an independent claim. Applicants respectfully submit that the objection to claim 25 was erroneous, because claim 25 is an independent claim.

Applicants respectfully request that this rejection of the claims be withdrawn.

3. Rejection of claims 2, 20, and 28-32, under 35 U.S.C. § 102 (b), as being anticipated by Dhordain *et al.* (1995).

The Office Action rejected claims 2, 20, and 28-32, under 35 U.S.C. § 102 (b), as being anticipated by Dhordain *et al.* (1995).

Respectfully, although Dhordain *et al.* (1995) teach a cDNA that encodes C-erg, this nucleic acid does not anticipate the nucleic acids of the claimed invention. Specifically, the Office Action states that “C-erg lacks amino acids 197-221 and 223-225 in the amino acid sequence depicted in SEQ ID NO: 2 (C-11 protein)”. *See*, Office Action of September 21, 2000; page 2. In addition, the Office Action states that “C-erg is identical to SEQ ID NO: 4 except through amino acids 381-421” *Id.* at 3.

Importantly, as amended, the nucleic acids of the claimed invention include only those nucleic acids that encode a C-11 protein that comprises the amino acid sequence of SEQ ID NO: 2. Thus, the nucleic acids of Dhordain *et al.* (1995) do not anticipate the present claims, because Dhordain *et al.* (1995) do not teach a nucleic acid that encodes a protein comprising the amino acid sequence of SEQ ID NO: 2.

Applicants respectfully request that this rejection of the claims be withdrawn.

4. Conclusion.

Applicants respectfully request withdrawal of the outstanding rejections and early notice of allowance to that effect.

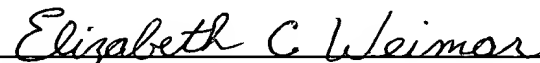
EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

If the Examiner finds that a telephone conference would further prosecution of this application, she is invited to call the undersigned.

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

Dated: March 21, 2001


Elizabeth C. Weimar
Reg. No. 44,478

CUSTOMER NO. 009629
MORGAN, LEWIS & BOCKIUS LLP
1800 M Street, N.W.
Washington, D.C. 20036
(202) 467-7000